

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

Chapter 9 No. 13-53846

City of Detroit, Michigan
Debtor.

Hon. Thomas J. Tucker

**MOTION FOR RELIEF AND DECLARING THE AUTOMATIC STAY
VOID AB INITIO AND VALIDATING FORECLOSURE SALE AND WAIVING THE
PROVISION OF FRBP 4001(a)(3)**

Fifth Third Bank, as servicer for Fifth Third Mortgage Company, by and through its attorneys, Trott Law, P.C., pursuant to 11 U.S.C. § 362(d), 11 U.S.C. § 922(b), L.B.R. 4001-1(E.D.M.), and L.B.R. 9014-1 (E.D.M.), moves for an order for relief and declaring the automatic stay void ab initio and validating foreclosure sale and waiving the provision of Fed.R.Bankr.P. 4001(a)(3) with respect to property commonly known as 20245 Mendota St., Detroit, MI 48221 (the “Property”); and in support thereof states as follows:

1. This Court has jurisdiction over the proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. On July 18, 2013, Debtor sought protection under Chapter 9 of the Bankruptcy Code.
3. Pursuant to 11 U.S.C. § 922(a), the automatic stay of 11 U.S.C. § 362(a) became applicable at the time that the bankruptcy petition was filed.
4. Movant is the servicer for Fifth Third Mortgage Company who is the prior holder of a mortgage encumbering the Property. **See, Loan Documents, Exhibit 6-A.**
5. The Fifth Third Mortgage was recorded on October 12, 2006 in Liber 45416, Page 1685 with the Wayne County Register of Deeds.
6. The prior owner of the Property, Audrey Venise Abby, filed a Chapter 7 bankruptcy case in the Eastern District of Michigan on March 26, 2013 (Bankr. Case No. 13-53846-tjt Doc 9965 Filed 06/12/15 Entered 06/12/15 11:53:57 Page 1 of 4

13-46043 E.D.M.). Fifth Third Bank obtained relief from the automatic stay in that bankruptcy case on June 12, 2013.

7. Schedule D in Ms. Abby's bankruptcy case did not indicate that the City of Detroit held a lien on the Property. **See, Schedule D, Exhibit 6-B.**

8. Fifth Third Bank began foreclosure of the Property by advertisement and published the first notice on September 12, 2013.

9. After the foreclosure began, Fifth Third Bank found out that there existed a September 21, 2006 mortgage held by The City of Detroit on the Property that was in the original amount of \$10,000.00 and junior in priority to the mortgage held by Fifth Third Mortgage Company (the "CoD Junior Mortgage"). **See, CoD Junior Mortgage, Exhibit 6-C.**

10. On November 1, 2013, Fifth Third Bank then moved for relief from the automatic stay with respect to the Property in this bankruptcy case.

11. The City of Detroit and Fifth Third Bank stipulated to relief from the automatic stay and an order granting the same was entered by the Court on November 25, 2013.

12. The approximate market value of the Property at the time of the relief was \$38,926.00 and its current value is \$31,142.00. **See, SEV's, Exhibit 6-D.**

13. On March 6, 2014, the mortgage held by Fifth Third Bank was foreclosed and sold at Sheriff's sale. The Foreclosure sale bid to Fifth Third Mortgage Company was \$55,104.92. **See, Sheriff's Deed, Exhibit 6-E.**

14. Neither the City of Detroit nor any other party in interest attempted to redeem the Property prior to the September 6, 2014 expiration of the statutory redemption period.

15. Fifth Third Bank will be severely prejudiced by having to re-foreclose the Property.

16. Pursuant to good cause shown pursuant to 11 U.S.C. § 362(d), the automatic stay should be annulled Ab Initio as to the Property.

17. Pursuant to Local Bankruptcy Rule 9014-1(b)(4), attached is a copy of the proposed Order Declaring the Automatic Stay Void Ab Initio, Validating Foreclosure Sale and Waiving the Provision of FRBP 4001 (a)(3) labeled as Exhibit "A";

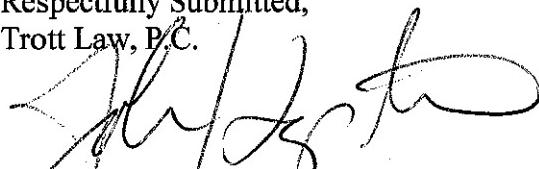
18. Pursuant to LBR 9014-1(b)(4) (E.D.M.), a copy of the proposed *Order Granting Relief from the Automatic Stay and Waiving the Provision of Fed. R. Bankr. P. 4001(a)(3)* is labeled as Exhibit "1".

19. Movant also requests that in the event a hearing on this motion is held, and Movant prevails, that the Court order the submission of an order in substantial compliance with Exhibit 1 and that presentment of the order waived.

20. Concurrence from Debtor's counsel was sought by counsel for Movant and concurrence was not given.

WHEREFORE, Movant respectfully requests that the Court enter an Order Declaring the Automatic Stay Void Ab Initio, Validating Foreclosure Sale and Waiving the Provision of FRBP 4001 (a)(3) for good cause shown pursuant to 11 U.S.C. §362(d)(1) and/or (d)(2), and that the Order is effective immediately upon entry by this Court notwithstanding the provision of FRBP 4001(a)(3); and whatever other relief the Court deems just and equitable..

Respectfully Submitted,
Trott Law, P.C.


/S/ John P. Kapitan (P61901)
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Dated: June 12, 2015

T&T #425482B03

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN**

In re:
City of Detroit, Michigan
Debtor.

Chapter 9 No. 13-53846
Hon. Thomas J. Tucker

**ORDER DECLARING AUTOMATIC STAY VOID AB INITIO AND VALIDATING
FORECLOSURE SALE AND WAIVING THE PROVISION OF FRBP 4001(a)(3) WITH
RESPECT TO 20245 MENDOTA ST., DETROIT, MI 48221**

Movant, Fifth Third Bank, as servicer for Fifth Third Mortgage Company, by and through counsel, Trott Law, P.C., having filed a Motion for Relief and Declaring the Automatic Stay Void Ab Initio and Validating Foreclosure Sale and Waiving the Provision of FRBP 4001(a)(3) with respect to the property commonly known as 20245 Mendota St., Detroit, MI 48221 situated in the City of Detroit, County of Wayne in the State of Michigan with a legal description of:

**Lot(s) 4275, including ½ the adjoining vacated public alley at the rear thereof,
Blackstone ParkSubdivision No. 6 as recorded in Liber 52 on Page(s) 91 and 92 of
Plats.**

and the approximate market value of the property is \$38,926.00; and the Foreclosure Sale Bid being approximately \$55,104.92; and the property having been sold at Sheriff's Sale on March 6, 2014; and the redemption period having expired on September 6, 2014; and the Court being in receipt of the Motion and being fully advised:

IT IS HEREBY ORDERED that the Automatic Stay is void Ab Initio as to Movant with respect to the property located at 20245 Mendota St., Detroit, MI 48221.

IT IS FURTHER ORDERED that all foreclosure proceedings and the sale held on March 6, 2014 are hereby declared valid; and the redemption period having expired on September 6, 2014; This Order is effective immediately upon entry by this Court notwithstanding the provision of FRBP 4001(a)(3). This Order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Bankruptcy Code.